

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**BED-EX, INC. ,
Plaintiff**

V.

**ALIMED, INC.,
Defendant**

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Civil Action No. 13-573

DEFENDANT'S NOTICE OF REMOVAL

Defendant AliMed, Inc., files this notice of removal under 28 W.S.C. §1446(a).

A. Introduction

1. Plaintiff is Bed-Ex, Inc.; Defendant is AliMed, Inc.

2. On June 16, 2013 in the 45th Judicial District Court of Bexar County, Texas, Plaintiff sued Defendant for alleged breach of contract, breach of fiduciary duty, violation of the Texas Thief Liability Act and patent infringement in violation of 35 U.S.C. §271. Further, Plaintiff sought a declaratory judgment, temporary restraining order and temporary and premature injunction.

3. Defendant received notice of the suit and a copy of the initial pleading on June 27, 2013. Defendant files this notice of removal within the 30-day time period required by 28 U.S.C. §1446(b). *Bd. of Regents of Univ. of Tex. Sys. v Nippon Tel & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

B. Basis for Removal

4. Removal is proper because Plaintiff's suit involves a federal question. 28 U.S.C. §§1331, 1338(a); 1441(a); *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S.

308, 312 (2005); *Broder v. Cablevision Sys. Corp.*, 418 F.3d 187, 194 (2d Cir. 2005); *Peters v. Union Pac R.R.*, 80 F.3d 257, 260 (8th Cir. 1996). Specifically, Plaintiff claims that Defendant infringed upon Plaintiff's alleged patent in violation of 35 U.S.C. §271. The district courts have original jurisdiction of any civil action arising under any Act of Congress relating to patents. 28 USC §1338(a)

5. Removal is proper because there is complete diversity between the parties. 28 U.S.C. §1332(a); *Johnson v. Columbia Props. Anchorage, L.P.*, 437 F.3d 894, 899-900 (9th Cir. 2006). Plaintiff is a citizen of Delaware and Texas. Defendant is a citizen of Massachusetts. Additionally, the amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. §1332(a); *Andrews v. E.I. du Pont de Nemours & Co.*, 447 F.3d 510, 514-15 (7th Cir. 2006) Plaintiff alleges that as of November 2012 Defendant ceased making Minimum Annual Royalty (MAR) payments provided for in Appendix D of the Licensing Agreement. Appendix D provides for quarterly MAR payments of \$72,450.00 in the fourth year of the Licensing Agreement and quarterly MAR payments of \$94,185.00 in the fifth year of the Licensing Agreement. MAR payments provided for in Appendix D from November 2012 to the present, if due and payable, would far exceed the amount of \$75,000.00. In Plaintiff's First Amended Original Petition, Plaintiff seeks recovery of MAR payments which Plaintiff alleges are due and unpaid from November 2012 to the present.

6. All Defendants who have been properly served consent to the removal of this case to federal court. *Cook v. Randolph Cnty., Ga.*, 573 F.3d 1143, 1150-51 (11th Cir. 2009); *Pritchett v. Cottrell, Inc.*, 512 F.3d 1057, 1062 (8th Cir. 2008); *Harper v. AutoAlliance Int'l, Inc.*, 392 F.3d 195, 201-02 (6th cir. 2004).

8. Copies of all pleadings, process, orders, and other filings in the state-court suit are attached to this notice as required by 28 U.S.C. §1446(a).

9. Venue is proper in this district under 28 U.S.C. §1446(a) because the state court where the suit has been pending is located in this district.

10. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

C. Jury Demand

11. Plaintiff did demand a jury in the state-court suit.

D. Conclusion

12. For these reasons, Defendant asks the Court to remove the suit to the District Court of the Western District of Texas.

Respectfully submitted,

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LES KATONA, JR.

State Bar No. 11106680

**ATTORNEY FOR DEFENDANT,
ALIMED, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was transmitted by facsimile, hand delivered and/or mailed by certified mail, return receipt requested to each of the following, on this the 2 day of July, 2013:

Todd A. Prins

HAND DELIVERED

Prins Law Firm
4940 Broadway, Suite 108
San Antonio, Texas 78209



LES KATONA, JR.